HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

Chapter VIII Rule 32 (2)(b)

Description of the case.

C.M.W.P. No. 868/2004 (M.S.)

Smt Sumitra Devi
vs
A.D.J./IIIrd F.T.C. Haridwar
and others

Approved for reporting

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~~Not Approved for Reporting~~

Date of decision 17.9.2004

Initial of Judge

In The High Court of Uttaranchal, at Nainital.

Civil Misc. Writ Petition No. 868/2004(M/S)

Smt. Sumitra Devi ..Petitioner.

Vs.

A.D.J. / IIIrd F.T.C., Haridwar
and others ..Respondents.

Dated: 17-9-2004

Hon'ble Mr. Justice Rajesh Tandon J.

Heard Sri Manish Arora, learned counsel for the petitioner and Sri R.C.Arya, learned Standing Counsel.

By the present writ petition the petitioner has prayed for a writ of certiorari for quashing the order dated 19-8-2004 as well as the order dated 1.4.2003 passed by the respondents 1 and 2 respectively.

Briefly stated the facts of the case are that a suit was filed by the respondent no.3 against the petitioner on 16.12.2001 under the Specific Relief Act. The petitioner was arrayed as defendant in the suit numbered as O.S. No. 345/2001. The suit was pending before the Civil Judge (S.D.), Haridwar. 25.3.2003 was the date fixed. The petitioner and her counsel were on the impression that the next dated fixed in the case was 27.4.2003 but the date was actually fixed for 27.3.2003 and on 27.3.2003 the suit proceeded exparte against the petitioner and 1.4.2003 was fixed for exparte judgment. The petitioner along with her counsel went to the Court on 27.3.2003 and came to know that the date was actually fixed on 27.3.2003 and not 27.4.2003 and the suit was decided exparte on 1.4.2003. application under Order 9 Rule 13 C.P.C. was moved by the petitioner on 28.4.2003. The Court below has dismissed the application of the petitioner for setting aside the exparte decree on 190.8.2004. The Presiding Officer has mentioned the various dates which were fixed in the case and as such the case was decided under Order 8 Rule 10 C.P.C. The interest of justice requires that the matter should be heard on merit. The learned counsel for the petitioner has also referred the decision of this

Court in the matter of *Punjab and Sind Bank vs. Sri Ram Panjwani and another; 2004(2) Uttaranchal Decisions, 169* wherein the reliance has been placed on the judgment of *Surendra Kumar and another vs. Rajendra Kumar Agarwal: 1989 (2) ARC, 263.*

In view of the aforesaid facts and circumstances of the case liberty is given to the petitioner to apply afresh for recalling of the order passed exaprte. Learned Judge concerned is directed to consider the application in accordance with the law and pass sutable orders after taking an undertaking from the petitioner that he will file the written statement within two weeks and thereafter the suit itself may be disposed of. The order passed by the respondent no.1 on 19-8-2004 shall not come in the way of the petitioner.

Subject to the aforesaid observation , the writ petition is dismissed.

ISB **(Rajesh Tandon, J.)**